

U.S. Department of Justice  
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A73 572 206 - Newark

Date:

May 10, 1996

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In re: JOHNNY EDUARDO GAMBOA-CALVO

IN DEPORTATION PROCEEDINGS

APPEAL

INDEX

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF SERVICE: Lisa M. Golub  
Assistant District Counsel

CHARGE:

Order: Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] -  
In United States in violation of law

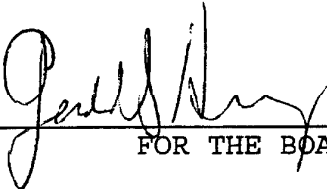
ORDER:

PER CURIAM. In an order dated September 29, 1995, the Immigration Judge terminated the respondent's deportation proceeding due to her belief that the Immigration and Naturalization Service had not read the Order to Show Cause and Notice of Hearing (OSC) to the respondent when effecting person service or complied with 8 C.F.R. § 241.1(c), which requires that when personal service of the OSC is made, the contents of the OSC must be explained to the respondent. The Immigration and Naturalization Service has appealed from the Immigration Judge's decision. The appeal is sustained.

We note that, when personal service of the OSC is made, the OSC is not required to be read; it is sufficient that the OSC be explained to the respondent. 8 C.F.R. § 241.1(c). The record indicates that the Service has adopted a policy in its Lyndhurst, New Jersey, Asylum Office, of explaining the OSC to the respondent at the time personal service is made, and providing a written "Explanation of Order to Show Cause and Notice of Hearing" (Exh. 2). The OSC was signed by the Asylum Officer and by the respondent. While the official who explained the notice was not present at the respondent's deportation hearing, we observe that there is a presumption that public officers properly discharge their duties. Matter of Grijalva, Interim Decision 3246 (BIA 1995). Without a challenge from the respondent regarding the adequacy of the explanation and evidence in support thereof, the Immigration Judge should have presumed that the Service employees "explained" the OSC consistent with 8 C.F.R. § 242.1(c). See generally Matter of Hernandez, Interim Decision 3265 (BIA 1996).

The purpose of the OSC is to allow the Service to commence proceedings against an alien and to notify the alien of the nature of the proceeding, the allegations through which the Service charges the alien, and the alien's procedural and substantive rights. See section 242B(a)(1)(A-F) of the Immigration and Nationality Act, 8 U.S.C. 1252b (a)(1)(A-F). The OSC which the Service issued to the respondent fulfills these requirements. The Immigration Judge's decision to terminate the respondent's proceeding defeats the purpose of section 242B, and we find that her decision was in error. As such, the Service's appeal is sustained. 1/

FURTHER ORDER: The Immigration Judge's decision terminating the proceeding is reversed and the record is remanded for further proceedings.

  
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FOR THE BOARD

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1/ We note that the respondent may file a motion to rescind if there is actual evidence of improper procedures involved in service of the OSC.